

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEAN MURPHY,

Plaintiff,

v.

DEWAYNE MOORE, individually, and as
Code Enforcement Inspector for the City of
Fresno; CITY OF FRESNO, a City or
Municipality; and DOES 1-10, Inclusive,

Defendants.

Case No. 1:24-cv-00226-JLT-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. 20)

Dean Murphy, proceeding *pro se*, initiated this action against Dewayne Moore and the City of Fresno (the “City”) (collectively, “Defendants”) by filing a complaint on February 21, 2024. (Doc. 1) Defendants moved to dismiss (Doc. 11) the operative First Amended Complaint (Doc. 9) on June 13, 2024. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (*See* Doc. 13)

On September 30, 2024, the assigned magistrate judge issued findings and recommendations recommending the Court: (1) grant Plaintiff’s request for leave to file a late opposition; (2) grant both parties’ requests for judicial notice; (3) grant Defendants’ motion to dismiss in part and deny it in part, with leave to amend some claims; and (4) grant Defendants’ motion to strike in part and deny it in part. (Doc. 20) The Court advised the parties that any

1 objections to the Findings and Recommendations were to be filed within 21 days of service. (*See*
2 Doc. 21) The parties were informed that the “failure to file objections within the specified time
3 may result in the waiver of rights on appeal.” (Doc. 20 at 26, citing *Wilkerson v. Wheeler*, 772
4 F.3d 834, 839 (9th Cir. 2014)) No objections were filed, and the time to do so has expired.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
6 *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that
7 the findings and recommendations are supported by the record and by proper analysis.

8 Accordingly,

- 9 1. The findings and recommendations issued on September 30, 2024 (Doc. 20) are
10 **ADOPTED IN FULL.**
- 11 2. Defendant’s Motion and Request for Leave to File a Late Opposition (Doc. 17) is
12 **GRANTED.**
- 13 3. Both parties’ requests for judicial notice (Docs. 11, 18) are **GRANTED.**
- 14 4. Defendants’ Motion to Dismiss (Doc. 11) is **GRANTED IN PART AND**
15 **DENIED IN PART**, as follows:
 - 16 a. Defendants’ Motion to Dismiss is **GRANTED** as to Plaintiff’s claims
17 under Article 1, sections 2, 7, and 13 of the California Constitution, and
18 those claims are **DISMISSED WITHOUT LEAVE TO AMEND;**
 - 19 b. Defendants’ Motion to Dismiss is **GRANTED** as to Plaintiff’s claim under
20 Article 1, section 19 of the California Constitution and Plaintiff’s § 1983
21 due process claim, and those claims are **DISMISSED WITH LEAVE TO**
22 **AMEND;** and
 - 23 c. Defendants’ Motion to Dismiss is **DENIED** regarding Plaintiff’s claim
24 under the Bane Act and the § 1983 claim based on the First and Fourth
25 Amendments.
- 26 5. Defendants’ Motion to Strike (Doc. 11) is **GRANTED IN PART AND DENIED**
27 **IN PART**, as follows:
 - 28 a. Defendants’ Motion to Strike is **GRANTED** as to references to the Fifth

Amendment in Plaintiff's First Claim for Relief and Plaintiff's request for treble damages; and

b. Defendants' Motion to Strike is **DENIED** as to references to the Fifth Amendment in Plaintiff's Third Claim for Relief and Plaintiff's request for attorney's fees.

6. Within 21 days, Plaintiff may file a Second Amended Complaint. Failure to timely file an amended Complaint indicates to the Court that Plaintiff wishes to continue litigation based on his current Complaint.

IT IS SO ORDERED.

Dated: **October 31, 2024**


UNITED STATES DISTRICT JUDGE